

REMARKS

Claims 27, 32, 37 and 42 are pending in the application. Claims 1-26, 28-31, 33-36, 38-41, and 43-44 are canceled. The amendments to the claims introduce no new subject matter.

Reconsideration of the application is respectfully requested in view of the following remarks. For the Examiner's convenience, Applicants' remarks are presented in the order in which they were raised in the Office Action.

A. Non-Statutory Double Patenting

Claims 27-44 stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-14 of U.S. Patent No. 5,371,017.

Claim 27-43 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-6, 8-12, 14 and 15 of copending Application No. 10/438,313, which is an application for reissue of U.S. Patent No. 5,371,017.

As applicants have withdrawn from the re-issue proceeding relating to the provisional judicially created obviousness-type double patenting rejection and therefore the claims of those patents will not be amended, applicants have amended the claims to recite SEQ ID NO: 69 or SEQ ID NO: 85. SEQ ID NO: 69 has 2064 nucleotides that encode 686 amino acid. SEQ ID NO: 85 has 2523 nucleotides that encode the same 686 amino acids at the C-terminus with an additional 155 amino acids at the N-terminus derived from super-oxide dismutase. By way of comparison, the claims of U.S. Pat. No. 5,371,017 do not recite specific nucleotide sequences, but rather include certain dependent claims that include recitations of nucleotides that encode specific polypeptide sequences. Applicants respectfully submit that the pending claims are not obvious over the claims in the issued patents cited in the various judicially created obviousness-type double patenting rejections.

Applicants therefore respectfully request that the Examiner withdraw the judicially created obviousness-type double patenting rejections.

B. Claim Rejections under 35 U.S.C. § 112, First Paragraph

1. *Rejection of claims 27-44 for lack of Written Description under 35 U.S.C. § 112, first paragraph*

Claims 27-44 remain rejected under 35 U.S.C. § 112, first paragraph, as allegedly containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors, at the time the application was filed, has possession of the claimed invention.

Applicants respectfully traverse the rejection and its supporting remarks. However, given that the applicants have amended the claims to overcome the judicially created obviousness-type double patenting rejections as discussed above, the rejections are moot as the claims no longer include the limitations asserted by the Examiner to lack written description support.

Applicants therefore respectfully request that the Examiner withdraw the rejection of claims 27, 32, 37 and 42 under 35 U.S.C. § 112, first paragraph.

2. *Rejection of claims 27-44 for lack of enablement under 35 U.S.C. § 112*

Claims 27-44 stand rejected under 35 U.S.C. § 112, first paragraph, because the specification allegedly fails to reasonably provide enablement for the pending claims.

Applicants respectfully traverse the rejection and its supporting remarks. However, given that the applicants have amended the claims to overcome the judicially created obviousness-type double patenting rejections as discussed above, the rejections are moot as the claims no longer include the limitations asserted by the Examiner to lack enabling support.

Applicants therefore respectfully request that the Examiner withdraw the rejection of claims 27, 32, 37 and 42 under 35 U.S.C. § 112, first paragraph.

C. Claim Rejections under 35 U.S.C. § 112, Second Paragraph

Claims 27-44 stand rejected under 35 U.S.C. § 112, second paragraph, as allegedly failing to particularly point out and distinctly claim the subject matter which the applicants regard as the invention.

Applicants respectfully traverse the rejection and its supporting remarks. However, given that the applicants have amended the claims to overcome the judicially created obviousness-type double patenting rejections as discussed above, the rejections are moot as the claims no longer include the limitations asserted by the Examiner to lack written description support.

Applicants therefore respectfully request that the Examiner withdraw the rejection of claims 27, 32, 37 and 42 under 35 U.S.C. § 112, first paragraph.

CONCLUSION

In the event the U.S. Patent and Trademark office determines that an extension and/or other relief is required, applicant petitions for any required relief including extensions of time and authorizes the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to Deposit Account No. 03-1952 referencing docket no. 223002010005. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

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Respectfully submitted,

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